IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6857 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PRAKASH JAYANTILAL PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 6857 of 2002

MR BA VAISHNAV for Petitioner No. 1

MR RV DESAI, AGP for Respondent No. 1-4

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 16/10/2002

ORAL JUDGEMENT

Rule. Mr RV Desai learned AGP waives service of rule on behalf of the respondents.

2. The petitioner was appointed as a Junior Clerk by the respondents on compassionate basis. The petitioner's

appointment was made to the post of a Junior Clerk and the petitioner was required to pass the pre-service examination. On the ground that the petitioner failed to pass the examination after three attempts, by the impugned communication dated 6-7-2002, the petitioner's services were ordered to be terminated.

3. The petitioner's case is that under the rules additional two chances are permissible and that the petitioner has already made an application for permission to appear at the fourth attempt and that such application was made on 24-7-2002. However, the respondents have not considered the said application.

4. While issuing notice on 26-7-2002, this Court had granted ad-interim protection in favour of the petitioner and that is how the petitioner has continued in service.

5. In response to the notice, affidavit-in-reply has been filed by the Executive Officer of the Civil Hospital, Ahmedabad contending that if the employee does not pass the examination in three attempts, his services are required to be terminated.

6. At the hearing today, Mr Vaishnav learned counsel for the petitioner has placed reliance on the judgment dated 12-2-2002 of this Court in Special Civil Application No.5365 of 2001 where in a similar matter, the Government's stand was that upon exhausting three chances, the employees services are required to be terminated and thereafter only he can appear at the examination at the fourth attempt. In that case the Government had also agreed to grant the employees permission to appear at the examination at the fourth attempt.

7. There is no reason why similar order should not be passed in the present case also. Looking to the facts and circumstances of the case, it appears to the Court that the ends of justice would be served if the respondents are directed to permit the petitioner to appear at the pre-service examination at the fourth attempt. The respondents are also directed to permit the petitioner to continue in service till the results of the pre-service examination are declared at which the petitioner appears at the fourth attempt.

It is clarified that if the petitioner does not appear at the said examination at fourth attempt, the respondents may terminate the petitioner's services without waiting for the result of the examination.

8. The petition is accordingly allowed in the aforesaid terms.

Rule is made absolute with no order as to costs.

(M.S. Shah,J)

zgs/-